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State Bar Court of California Hearing Department Los Angeles STAYED SUSPENSION		
<p>Counsel For The State Bar</p> <p>Jeremy Ibrahim Contract Attorney 845 S. Figueroa St. Los Angeles, CA 90017 (213) 765-1252</p> <p>Bar # 261572</p>	<p>Case Number(s): 13-J-11972-RAP [Unfiled Matter: 14-J-03555]</p>	<p>For Court use only</p> <p style="text-align: center; font-size: 2em;">FILED</p> <p style="text-align: center; font-size: 1.5em;">SEP 12 2014</p> <p style="text-align: center;">STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p>
<p>In Pro Per Respondent</p> <p>Michael Motylinski Attorney at Law 9715 Estate Thomas PMB 123 St Thomas, VI 00802 (340) 201-6069</p> <p>Bar # 264363</p>	<p>Submitted to: Settlement Judge</p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p>	
<p>In the Matter of: MICHAEL MOTYLINSKI</p> <p>Bar # 264363</p> <p>A Member of the State Bar of California (Respondent)</p>	<p>STAYED SUSPENSION; NO ACTUAL SUSPENSION</p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted **September 23, 2009**.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of **14** pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."



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- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- Costs are added to membership fee for calendar year following effective date of discipline.
 - Costs are to be paid in equal amounts prior to February 1 for the following membership years: **the three billing cycles immediately following the Supreme Court order in this matter.** (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure). If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
 - Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
 - Costs are entirely waived.

B. Aggravating Circumstances [Standards for Attorney Sanctions for Professional Misconduct, standards 1.2(f) & 1.5]. Facts supporting aggravating circumstances are required.

- (1) **Prior record of discipline**
- (a) State Bar Court case # of prior case
 - (b) Date prior discipline effective
 - (c) Rules of Professional Conduct/ State Bar Act violations:
 - (d) Degree of prior discipline
 - (e) If Respondent has two or more incidents of prior discipline, use space provided below or a separate attachment entitled "Prior Discipline."
- (2) **Dishonesty:** Respondent's misconduct was intentional, surrounded by, or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.

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- (7) **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. **Please see "Attachment to Stipulation," at page 10**
- (8) **Restitution:** Respondent failed to make restitution.
- (9) **No aggravating circumstances** are involved.

Additional aggravating circumstances

C. Mitigating Circumstances [see standards 1.2(g) & 1.6]. Facts supporting mitigating circumstances are required.

- (1) **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) **No Harm:** Respondent did not harm the client, the public, or the administration of justice.
- (3) **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings.
- (4) **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) **Good Faith:** Respondent acted with a good faith belief that was honestly held and reasonable.
- (8) **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical or mental disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and the difficulties or disabilities no longer pose a risk that Respondent will commit misconduct.
- (9) **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) **Good Character:** Respondent's extraordinarily good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by subsequent rehabilitation.

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(13) **No mitigating circumstances** are involved.

Additional mitigating circumstances

For Additional Mitigating Circumstances, see page 11.

D. Discipline:

(1) **Stayed Suspension:**

(a) Respondent must be suspended from the practice of law for a period of **two (2) years**.

- i. and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.2(c)(1), Standards for Attorney Sanctions for Professional Misconduct.
- ii. and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. and until Respondent does the following:

The above-referenced suspension is stayed.

(2) **Probation:**

Respondent is placed on probation for a period of **two (2) years**, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18 California Rules of Court.)

E. Additional Conditions of Probation:

- (1) During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (2) Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (3) Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (4) Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (5) Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.

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- (6) Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (7) Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session.
- No Ethics School recommended. Reason: **Respondent is a resident of the US Virgin Islands. Respondent agrees to complete six hours of general ethics MCLE credits. Respondent further agrees that those six hours of ethics training will not be counted towards his required 25 hours of MCLE training. Respondent will provide proof of completion to probation within one (1) year of the effective date of the discipline herein.**
- (8) Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (9) The following conditions are attached hereto and incorporated:
- | | |
|-----------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation within one year. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**
- No MPRE recommended. Reason: .
- (2) **Other Conditions:**

ATTACHMENT TO

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: MICHAEL MOTYLINSKI

CASE NUMBERS: 13-J-11972; [Unfiled Matter: 14-J-03555]

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations of the specified statutes and/or Rules of Professional Conduct.

Case No. 13-J-11972 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

1. On November 10, 2003, Respondent was admitted to the practice of law in the State of Ohio and remained so admitted at all times stated herein.
2. On May 26, 2011, Respondent filed an Agreement for Consent to Discipline with the Supreme Court of Ohio in case no. 11-021.
3. On December 7, 2012, the Supreme Court of Ohio filed its Order that Respondent be suspended for a period of six months, stayed, for the violations stipulated to in the Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court. Thereafter, the order of the Supreme Court of Ohio became final.
4. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

5. In April 2009 Roth Industries ("Roth") employed Respondent as local counsel in a collection matter in Ohio. Roth's New York counsel, Bond, Schoenek, and King PLLC ("Law Firm"), referred Roth to Respondent. On May 5, 2009, Respondent filed a lawsuit on behalf of Roth in the Cuyahoga County Court of Common Pleas in Ohio.
6. In August and September 2009, Law Firm e-mailed Respondent and left voicemail messages on Respondent's cell phone requesting status updates, which Respondent did not provide.
7. On September 1, 2009, Respondent voluntarily placed himself on inactive status with the Ohio Supreme Court. Respondent remained on inactive status until June 21, 2010.
8. On September 28, 2009, Respondent responded to Law Firm's inquiries but did not inform Law Firm that Respondent placed himself on inactive status.

9. On October 8, 2009, Respondent advised Law Firm that he filed discovery requests, that Respondent was waiting for responses to the discovery requests, and that Respondent was attempting to settle the lawsuit.

10. On November 9, 2009, Respondent contacted Law Firm to advise it of a settlement offer he received from the defendant and on November 10, 2009, Roth rejected the settlement after reviewing it with Law Firm.

11. On December 1, 2009, Respondent participated in a telephone conference with the court.

12. On December 21, 2009, the Cuyahoga County Court of Common Pleas dismissed the lawsuit without prejudice due to the fact that Respondent was not an active attorney in Ohio. Respondent did not advise Law Firm or Roth that the case was dismissed.

13. Respondent spoke directly with a representative from Roth on January 21, 22, and February 23, 2010, in further attempts to settle the lawsuit. Respondent never informed Roth or Law Firm that he was not entitled to practice law.

14. Respondent admitted violating Ohio Rules of Professional Conduct, rule 1.4(b) [A lawyer shall explain a matter to the extent reasonably necessary to make informed decisions regarding the representation], rule 1.4(a)(3) [A lawyer shall keep the client reasonably informed about the status of the matter], and rule 1.4(a)(4) [A lawyer must comply as soon as practicable with reasonable requests for information from the client]. The applicable California violation is Business and Professions Code § 6068(m) [failure to respond to client inquiries and failure to inform client of significant developments].

15. Respondent also admitted violating Ohio Rules of Professional Conduct, rule 5.5(a) [A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction], and rule 5.5(b)(2) [A lawyer who is not admitted to practice in this jurisdiction shall not hold himself out to the public or otherwise represent that he is admitted to practice law in this jurisdiction]. The applicable California violation is Business and Professions Code § 6068(a) [Failure to comply with laws, to wit, the unauthorized practice of law in violation of Business and Professions Code §§ 6125 and 6126.]

16. The Ohio Supreme Court found in mitigation that Respondent's misconduct lacked a selfish or dishonest motive. It further found that Respondent lacked a prior history of discipline and that he cooperated with the disciplinary proceedings.

CONCLUSIONS OF LAW:

17. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in Ohio warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

Case No. 14-J-03555 (Discipline in Other Jurisdiction)

PROCEDURAL BACKGROUND IN OTHER JURISDICTION:

18. On October 19, 2009, Respondent was specially admitted to and allowed to practice in the US Virgin Islands solely as an Assistant Attorney General. Upon resigning from the Attorney General's Office, the US Virgin Islands Supreme Court rescinded Respondent's special admission on February 14, 2012 *nunc pro tunc* to May 19, 2011.

19. On May 5, 2012, an attorney with Glacial Energy filed a motion to the US Virgin Island Supreme Court requesting Respondent's *pro hac vice* admission to represent Glacial Energy in the Superior Court in one filed case.

20. On August 16, 2012, the US Virgin Islands Supreme Court granted Respondent's *pro hac vice* admission contingent on the Respondent's administration of the Oath of Office.

21. On February 12, 2013, The US Virgin Islands Supreme Court revoked Respondent's conditional *pro hac vice* admission based upon the discipline order from Ohio and since Respondent never completed the Oath of Office, the court determined his application was pending at the time of his disciplinary hearing.

22. Following a hearing on October 15, 2013, the hearing panel filed a Memorandum of Decision on December 2, 2013 finding that Disciplinary Counsel had proven Respondent engaged in the unauthorized practice of law in violation of Section 443 of Title 4 of the Virgin Islands Code and Model Rule 5.5 by working as corporate counsel for Glacial Energy VI, LLC and violated the Section 117 of Title 3 of the Virgin Islands Code by engaging in the private practice of law when he represented Roth Industries in Ohio while he employed as an Assistant Attorney General.

23. On February 25, 2014, the Supreme Court of the US Virgin Islands filed its Order and Opinion of the Court suspending Respondent for one (1) year actual due to his violations. The discipline precludes Respondent from applying to the US Virgin Islands Bar during the length of his suspension. Thereafter, the order of the US Virgin Islands Supreme Court became final.

24. The disciplinary proceeding in the other jurisdiction provided fundamental constitutional protection.

FACTS FOUND IN OTHER JURISDICTION:

25. In July of 2009, Respondent commenced his employment with the US Virgin Islands Attorney General's Office as an Assistant Attorney General. On October 19, 2009, the US Virgin Islands Supreme Court granted Respondent's motion for special admission to the US Virgin Islands' Bar allowing Respondent to practice law in the US Virgin Islands as an Assistant Attorney General only.

26. Between September 2009 and February 2010, after becoming inactive in Ohio and while working as an Assistant Attorney General in the US Virgin Islands, Respondent represented Roth Industries in Ohio. Respondent continued to practice as an Assistant Attorney General until his resignation on May 19, 2011.

27. In May of 2011, Upon leaving the Attorney General's Office, Respondent took employment with Glacial Energy VI, LLC as a staff attorney in their legal department. Respondent's duties included

drafting contracts, supporting ongoing litigation, working with outside counsel, and providing back office support to various Glacial Energy entities in the mainland United States as well as provide responsive material to regulatory agencies. On May 5, 2012, an attorney with Glacial Energy filed a motion to the US Virgin Island Supreme Court requesting Respondent's *pro hac vice* admission.

28. In November of 2012, Respondent was promoted to the Director of International Tax in the finance department until Respondent was let go by Glacial Energy on September 4, 2013.

29. On February 25, 2014, The US Virgin Islands Supreme Court held that Respondent violated Section 117 of Title 3 of the Virgin Islands Code [engaging in private practice of law while employed as an Assistant Attorney General], Section 443 of Title 4 of the Virgin Islands Code [Unauthorized practice of law as an attorney in the US Virgin Islands while not a member of their bar or admitted *pro hac vice*], Model Rule 5.5 [A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction], and Model Rule 8.4(d) [Engaging in conduct prejudicial to the administration of justice]. The applicable California violations are Business and Professions Code § 6068(a) [Failure to comply with laws, to wit, the unauthorized practice of law in violation of Business and Professions Code §§ 6125 and 6126.] and Rules of Professional Conduct, Rule 1-300(B) [Unauthorized practice of law in another jurisdiction]

30. The court held it had jurisdiction to discipline Respondent because part of his misconduct occurred while he was employed as an Assistant Attorney General and because of his pending *pro hac vice* application at the time of the disciplinary proceeding.

31. The court recognized in their decision that at the time Respondent engaged in his conduct the relationship between Section 443 of Title 4 of the Virgin Islands Code and Model Rule 5.5 may not have been fully clear. The court acknowledged that Respondent never represented to anyone that he was a Virgin Islands' attorney or never advised any client, firm, person, or company on any US Virgin Islands regulatory licensing issues. However, the court found that using the title corporate counsel constitutes holding oneself out as a licensed US Virgin Islands attorney and use of that title alone is sufficient to establish the unauthorized practice of law in violation of section 443.

CONCLUSIONS OF LAW:

32. As a matter of law, Respondent's culpability of professional misconduct determined in the proceeding in US Virgin Islands warrants the imposition of discipline under the laws and rules binding upon Respondent in the State of California at the time Respondent committed the misconduct in the other jurisdiction, pursuant to Business and Professions Code section 6049.1, subdivision (a).

AGGRAVATING CIRCUMSTANCES.

Multiple Acts of Misconduct (Std. 1.5(b)): Respondent's conduct in the Ohio discipline case involved Respondent engaging in the unauthorized practice of law, failing to inform the client of Respondent's inactive status and that he was ineligible to continue client's representation, failing to respond to the client's inquiries, and failing to inform the client of the dismissal. While working in the US Virgin Islands, Respondent engaged in the unauthorized practice of law on two separate occasions in violation of two separate US Virgin Islands Code sections.

MITIGATING CIRCUMSTANCES.

Additional Mitigating Circumstances:

Pretrial Stipulation: Respondent has now acknowledged his misconduct and stipulated to facts, conclusions of law, and disposition in order to resolve his disciplinary proceedings as efficiently as possible, thereby avoiding the necessity of trial and saving the State Bar time and resources. (*Silva-Vidor v. State Bar* (1989) 49 Cal.3d 1071, 1079 [where mitigative credit was given for entering into a stipulation as to facts and culpability].)

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards for Attorney Sanctions for Professional Misconduct “set forth a means for determining the appropriate disciplinary sanction in a particular case and to ensure consistency across cases dealing with similar misconduct and surrounding circumstances.” (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.1. All further references to Standards are to this source.) The Standards help fulfill the primary purposes of discipline, which include: protection of the public, the courts and the legal profession; maintenance of the highest professional standards; and preservation of public confidence in the legal profession. (See std. 1.1; *In re Morse* (1995) 11 Cal.4th 184, 205.)

Although not binding, the standards are entitled to “great weight” and should be followed “whenever possible” in determining level of discipline. (*In re Silverton* (2005) 36 Cal.4th 81, 92, quoting *In re Brown* (1995) 12 Cal.4th 205, 220 and *In re Young* (1989) 49 Cal.3d 257, 267, fn. 11.) Adherence to the standards in the great majority of cases serves the valuable purpose of eliminating disparity and assuring consistency, that is, the imposition of similar attorney discipline for instances of similar attorney misconduct. (*In re Naney* (1990) 51 Cal.3d 186, 190.) If a recommendation is at the high end or low end of a Standard, an explanation must be given as to how the recommendation was reached. (Std. 1.1.) “Any disciplinary recommendation that deviates from the Standards must include clear reasons for the departure.” (Std. 1.1; *Blair v. State Bar* (1989) 49 Cal.3d 762, 776, fn. 5.)

In determining whether to impose a sanction greater or less than that specified in a given Standard, in addition to the factors set forth in the specific Standard, consideration is to be given to the primary purposes of discipline; the balancing of all aggravating and mitigating circumstances; the type of misconduct at issue; whether the client, public, legal system or profession was harmed; and the member’s willingness and ability to conform to ethical responsibilities in the future. (Stds. 1.7(b) and (c).)

In this matter, Respondent admits to committing seven acts of professional misconduct. Standard 1.7(a) requires that where a Respondent “commits two or more acts of misconduct and the Standards specify different sanctions for each act, the most severe sanction must be imposed.”

The most severe sanction applicable to Respondent’s misconduct is found in Standard 2.6(b), which applies to Respondent’s violation(s) of Business and Professions Code §§ 6068(a), 6125, and 6126. Standard 2.6(b) provides that “suspension or reproof is appropriate when a member engages in the practice of law or holds himself or herself out as entitled to practice law when he or she is on inactive status or actual suspension for non-disciplinary reasons, such as non-payment of fees or MCLE non-compliance. The degree of sanction depends on whether the member knowingly engaged in the unauthorized practice of law.”

In the instant case, Respondent knowingly continued his representation Roth Industries in Ohio after he voluntarily went on inactive status and while employed in the US Virgin Islands as an Assistant Attorney General. Respondent failed to communicate with the client by failing to inform the client that Respondent was inactive, by failing to respond to client inquiries, and by failing to inform the client that the client's lawsuit had been dismissed due to Respondent's inactive status. However, the Ohio Supreme Court mitigated Respondent's misconduct by finding that it lacked a dishonest or selfish motive.

In the US Virgin Islands disciplinary case, Respondent willfully engaged in the private practice of law while employed as an Assistant Attorney General by continuing his representation of Roth Industries in Ohio. When Respondent left the Attorney's General's Office, he worked as corporate counsel with Glacial Energy for a year before applying for *pro hac vice* status to work on one case in the Superior Court of the US Virgin Islands. Respondent was admitted on the condition he complete the Oath of Office, which he never did. The US Virgin Islands Supreme Court's opinion and order is devoid of any evidence that Respondent worked on the case he applied for *pro hac vice* admission and their decision regarding the unauthorized practice of law in the US Virgin Islands does not relate to any work Respondent may have done on that case.

Model Rule 5.5(d), which the US Virgin Islands adopted, creates a corporate counsel exception authorizing an attorney admitted in a foreign jurisdiction to provide legal services to a company in another jurisdiction under certain exceptions. The US Virgin Islands Supreme Court acknowledged that Section 443 of Title 4 of the Virgin Islands Code and Model Rule 5.5 may not have been fully clear and used Respondent's case to clarify the relationship between Rule 5.5 and section 443. The court found that Respondent's duties and responsibilities were those only a lawyer could undertake, held that merely using the title "corporate counsel" or "staff attorney" constituted holding oneself out as a licensed US Virgin Islands attorney, and the use of those titles alone is sufficient to establish the unauthorized practice of law in violation of section 443. However, the court acknowledged that Respondent never expressly held himself out of a US Virgin Islands attorney.

In the Matter of Wells (Review Dept. 2006) 4 Cal. State Bar Ct. Rpt. 896 is instructive in this matter. In *Wells*, a California attorney moved to South Carolina, held herself out as an attorney entitled to practice in South Carolina, represented two clients in South Carolina and was found culpable of two counts of the unauthorized practice of law, two counts of collecting an illegal fee, two counts of failing to refund unearned fees, failing to maintain a client trust account and an offense of moral turpitude. (*In the Matter of Wells* (Review Dept. 2006) 4 Cal. State Bar Ct. Rpt. 896, 899-900; 902-910.) Although Wells informed her clients she was not entitled to practice law in South Carolina by advising she was a member of the California bar, the court held that fact was not a defense to the unauthorized practice of law but did mitigate against a finding of ill will or dishonesty. Wells' conduct resulted in a level of discipline of a two year stayed suspension, six months actual suspension, two years of probation with probationary terms and conditions.

The conduct in the instant case is similar to that in *Wells* because Respondent practiced law in violation of the other jurisdictions' unauthorized practice of law statutes. Additionally, Respondent, similar to Wells, did not expressly hold himself out as a US Virgin Islands attorney. However, the instant case is not as aggravated as *Wells* in that Respondent was not found culpable of receiving unlawful attorney's fees, failing to refund fees, charging unconscionable fees, or failing to maintain a client trust account. Wells also had a prior private reproof whereas Respondent has no prior disciplinary record. Lastly, Wells represented private citizens in South Carolina whereas Respondent worked for a

corporation providing services to that corporation in their legal department that did not involve US Virgin Islands law.

Given Respondent's conduct in this case is less severe than *Wells*, the ambiguity acknowledged by the US Virgin Islands Supreme Court regarding the relationship between Model Rule 5.5 and section 443, and mitigating factors found in the Ohio discipline case, it follows that Respondent's discipline should be less severe than that recommended by the Review Department in the *Matter of Wells*. Thus, a two-year stayed suspension with two years of probation, subject to certain conditions, is appropriate, to protect the public, and will serve the purposes of attorney discipline set forth in Standard 1.1.

COSTS OF DISCIPLINARY PROCEEDINGS.

Respondent acknowledges that the Office of the Chief Trial Counsel has informed Respondent that as of January 1, 2013, the prosecution costs in this matter are \$4,352. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

EXCLUSION FROM MCLE CREDIT


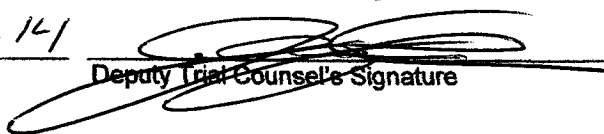
Pursuant to rule 3201, Respondent may not receive MCLE credit for completion of six hours of MCLE Ethics training ordered as a condition of his probation. (Rules Proc. of State Bar, rule 3201.)

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In the Matter of: MICHAEL MOTYLINSKI	Case number(s): 13-J-11972 [Unfiled Matter: 14-J-03555]
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SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

8/21/14 Date	 Respondent's Signature	Michael Motylinski Print Name
8-25-14 Date	 Deputy Trial Counsel's Signature	Jeremy Ibrahim Print Name

(Do not write above this line.)

In the Matter of: MICHAEL MOTYLINSKI	Case Number(s): 13-J-11972; 14-J-03555 (Unfiled Matter)
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STAYED SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- All Hearing dates are vacated.

On page 6 of the Stipulation, delete the "X" in the box at paragraph E.(7) next to the language, "Within one (1) year of the effective date of the discipline herein . . . at the end of that session."

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

SEPTEMBER 12, 2014
Date


GEORGE E. SCOTT, JUDGE PRO TEM
Judge of the State Bar Court

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on September 12, 2014, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

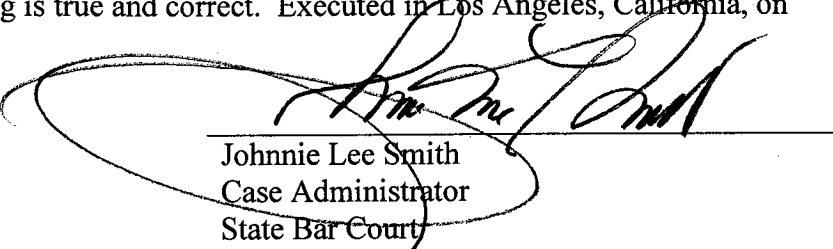
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**MICHAEL MOTYLINSKI
9715 ESTATE THOMAS
PMB 123
ST THOMAS, VI 00802**

- by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

JEREMY M. IBRAHIM, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on September 12, 2014.



Johnnie Lee Smith
Case Administrator
State Bar Court